

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CODY LEAVITT,

Petitioner,

v.

DWIGHT NEVEN, et al.,

Respondents.

Case No. 2:12-cv-00838-MMD-NJK

ORDER

Cody Leavitt, a Nevada prisoner, has submitted a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254. Petitioner has now paid the filing fee (see dkt. no. 8). Therefore, the habeas petition shall be filed and docketed, and it shall be served upon the respondents.

A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C. §2254(b) (successive petitions). If petitioner is aware of any claim not included in his petition, he should notify the Court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

Petitioner has also submitted a motion for the appointment of counsel (dkt. no. 5). There is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir.1993). The decision to appoint counsel is generally discretionary.

1 *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.1986), cert. denied, 481 U.S. 1023
2 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), cert. denied, 469 U.S. 838
3 (1984). However, counsel must be appointed if the complexities of the case are such
4 that denial of counsel would amount to a denial of due process, and where the petitioner
5 is a person of such limited education as to be incapable of fairly presenting his claims.
6 See *Chaney*, 801 F.2d at 1196; see also *Hawkins v. Bennett*, 423 F.2d 948 (8th
7 Cir.1970). The petition in this action appears sufficiently clear in presenting the issues
8 that petitioner wishes to raise. Counsel is not justified at this time. The motion is denied
9 without prejudice.

10 IT IS THEREFORE ORDERED that the Clerk shall FILE and ELECTRONICALLY
11 SERVE the petition (dkt. no. 3-1) on the respondents.

12 IT IS FURTHER ORDERED that petitioner's motion for leave to file additional
13 pages (dkt. no. 3) is GRANTED.

14 IT IS FURTHER ORDERED that respondents shall have forty-five (45) days from
15 entry of this order within which to answer, or otherwise respond to, the petition. In their
16 answer or other response, respondents shall address any claims presented by petitioner
17 in his petition as well as any claims presented by petitioner in any Statement of
18 Additional Claims. Respondents shall raise all potential affirmative defenses in the initial
19 responsive pleading, including lack of exhaustion and procedural default. Successive
20 motions to dismiss will not be entertained. If an answer is filed, respondents shall
21 comply with the requirements of Rule 5 of the Rules Governing Proceedings in the
22 United States District Courts under 28 U.S.C. §2254. If an answer is filed, petitioner
23 shall have forty-five (45) days from the date of service of the answer to file a reply.


24 IT IS FURTHER ORDERED that, henceforth, petitioner shall serve upon the
25 Attorney General of the State of Nevada a copy of every pleading, motion, or other
26 document he submits for consideration by the Court. Petitioner shall include with the
27 original paper submitted for filing a certificate stating the date that a true and correct
28 copy of the document was mailed to the Attorney General. The Court may disregard any

1 paper that does not include a certificate of service. After respondents appear in this
2 action, petitioner shall make such service upon the particular deputy attorney general
3 assigned to the case.

4 IT IS FURTHER ORDERED that any state court record exhibits filed by
5 respondents herein shall be filed with a separate index of exhibits identifying the exhibits
6 by number or letter. The CM/ECF attachments that are filed further shall be identified by
7 the number or numbers (or letter or letters) of the exhibits in the attachment. The hard
8 copy of any additional state court record exhibits shall be forwarded – for this case – to
9 the staff attorneys in Reno.

10 IT IS FURTHER ORDERED that petitioner's motion for appointment of counsel
11 (dkt. no. 5) is DENIED without prejudice.

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13 DATED THIS 7th day of January 2013.

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17 MIRANDA M. DU
18 UNITED STATES DISTRICT JUDGE
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